REMARKS

The Office reviewed claims 1-19 and issued a restriction requirement requiring election of either claims 1-9 (Group I) or claims 10-19 (Group II). With this paper, claim 10 is changed and new claims 20 and 21 are added to the application, so that claims 1-21 are now pending.

Claim 10 is changed to eliminate the recitation requiring that the mixed oxide layer be deposited at a substrate temperature of less than 700C, and that limitation is now included in the application in new claim 20. Further, new claim 21, depending from new claim 20, recites an additional limitation regarding the thickness of the mixed oxide layer, which limitation is also recited in original claim 1.

Election with Traverse

Applicant hereby *elects the Group I claims (1-9) with traverse,* in view of the above changes. Applicant has now amended claim 10 so as to obviate the grounds for restriction given in the Restriction Requirement, and requests that the Office also examine claims 10-19 and also new claims 20 and 21.

For a restriction requirement to be issued, 35 USC 121 requires that the claims being restricted be to both independent and distinct inventions. The MPEP at 806.05 explains that:

> the term "*independent*" (i.e., not dependent) means that there is no disclosed relationship between the two or more inventions claimed, that is, they are *unconnected in design, operation, and effect*. For example, a process and an apparatus incapable of being used in practicing the process are independent inventions.
>
> ...
>
> Related (i.e. not independent) inventions are *distinct* if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious)

> OVER THE OTHER (though they may each be unpatentable over the prior art). [Emphasis added.]

The invention as in claim 1 is not *independent* of the invention as amended claim 10, because the device of claim 1 is recited as having the characteristics resulting from the method recited in claim 10. It cannot fairly be said then that the invention as recited in claim 1 and the invention as recited in claim 10 (as amended here) are "unconnected in design, operation, and effect," as required for two independent inventions.

Nor can it be said that the invention as recited in claim 1 and the invention as recited in claim 10 (as amended here) are *not* connected in at least one of design, operation, or effect and that at least one is PATENTABLE (novel and nonobvious) over the other, as required for the inventions to be *distinct*. The inventions are clearly connected in effect, since the method of claim 10 produces the device of claim 1 and the fabrication of a device as in claim 1 requires a method as in claim 10, and it is surely true that if a reference were to disclose a device as in claim 1, it would serve as a basis for rejection for a claim to a method as in claim 10. The two inventions are thus not distinct.

Applicant therefore respectfully submits that the inventions as in claim 1 and claim 10 are neither independent nor distinct, both of which are required for restriction per 35 USC 121.

Regarding the new claims

Applicant further respectfully submits that new claim 21 includes a limitation corresponding to each and every limitation of claim 1, and only limitations corresponding to the limitations of claim 1. Therefore the invention as in claim 21 cannot fairly be said to be independent and distinct from the invention as in claim 1 and ought to be examined with the elected claims.

Conclusion

It is believed that all of the claims now pending in the application, namely claims 1-21, are in condition for allowance and their passage to issue is earnestly solicited.

Respectfully submitted,

Nov. 3, 2006

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